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August 6, 1993

BY HAND DELIVERY

William F. Caton
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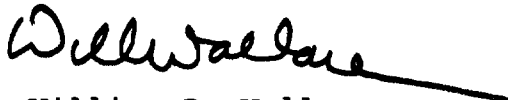
RE: Celsat Inc., RM-7927

Dear Mr. Caton:

Transmitted herewith on behalf of Loral Qualcomm Satellite Services, Inc. for filing with the Commission in the above-referenced rule making are an original and four copies of its "Opposition To Amendment To Petition For Rule Making."

Should there be any questions regarding this document, please communicate with this office.

Respectfully submitted,


William D. Wallace

Enclosures

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Before The
Federal Communications Commission
Washington, D.C. 20554

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AUG - 6 1993

In the Matter of:)
)
Petition of CELSAT, Inc. for)
)
AMENDMENT OF PARTS 2, 22 & 25)
OF THE COMMISSION'S RULES)
)
For an Allocation of)
Frequencies and Other Rules)
for a New Nationwide Hybrid)
Space/Ground Cellular Network)
for Personal/Mobile)
Communications Services)

RM-7927

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

92-28

To: The Commission

OPPOSITION TO "AMENDMENT" TO PETITION FOR RULE MAKING

Loral Qualcomm Satellite Services, Inc. (LQSS), by its attorneys, hereby requests that the "Amendment" to Petition for Rule Making filed by Celsat, Inc. be promptly dismissed or denied as not in conformance with the Commission's Rules and contrary to the public interest.^{1/} LQSS is an applicant for authorization to construct and operate a low-earth orbit satellite system using the MSS/RDSS bands to provide innovative Mobile-Satellite Services (MSS) and Radiodetermination Satellite Service (RDSS).^{2/}

In its "amended" petition, Celsat outlines a spectrum allocation for "Hybrid Personal Communications Service" ("HPCS")

^{1/} Celsat's Petition for Rule Making was filed on February 6, 1992, and appeared on Public Notice on March 9, 1992. LQSS filed comments opposing that petition on April 8, 1992.

^{2/} See Application of LQSS for a Low-Earth Orbit Satellite System, File Nos. 19-DSS-P-91(48) and CSS-91-014 (filed June 3, 1991).

in the Emerging Technology bands, specifically, 1970-1990 MHz (uplink) and 2160-2180 MHz (downlink). At WARC-92, these bands were allocated on a co-primary basis to the Mobile, Fixed and Mobile-Satellite services.^{3/} Because these bands may be allocated domestically for second-generation MSS systems, LQSS has a substantial interest in the disposition of Celsat's pleading.^{4/}

Celsat's "Amendment" is simply another attempt to preempt use of MSS spectrum without filing an application. Celsat's latest pleading makes clear that it is proposing an MSS system. Yet, it refuses to accept the consequences of having missed the cutoff date for applications in the MSS/RDSS bands.

The Commission has already rejected Celsat's procedurally defective request for assignment of spectrum. The "amendment" is an impermissible repetition of or a late-filed supplement to its Petition for Reconsideration of the Commission's denial of its Petition for Rule Making.^{5/} Accordingly, the Commission should dismiss or deny the amendment without further consideration as inconsistent with its rules and policies governing the provision of satellite and terrestrial mobile communications services.

^{3/} See Addendum & Corrigendum to the Final Acts of the World Administrative Radio Conference, Malaga-Torremolinos, 1992.

^{4/} See Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676 (1992); Re-development of Spectrum to Encourage Innovation in the use of New Telecommunications Technologies, 7 FCC Rcd 1542 (1992).

^{5/} Celsat filed a Petition for Reconsideration of the Commission's order on October 5, 1992.

I. CELSAT'S "AMENDMENT" SHOULD BE DISMISSED AS
PROCEDURALLY OUT OF TIME AND/OR IMPERMISSIBLE.

Nearly a year ago, the Commission dismissed Celsat's Petition for Rule Making for the MSS/RDSS bands, finding that "the system proposed by CELSAT would not conform to the WARC-92 allocation for the United States. In particular, the terrestrial component of its proposal is inconsistent with the international allocations."^{6/} Celsat petitioned for reconsideration, arguing that the Commission had not recognized the advantages of its system. In seeking reconsideration, Celsat expressly stated that it would seek to incorporate into its system spectrum from the Emerging Technology bands. See Celsat Petition for Reconsideration, at 13 (October 5, 1992).

Now, 10 months later, Celsat has filed a so-called "amendment" to its original Petition for Rule Making in which it details this requested allocation of spectrum at 2 GHz.^{7/} The proposed bands were apparently selected because at WARC-92 they were allocated to the Mobile and Mobile-Satellite services on a co-primary basis.^{8/}

^{6/} Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites, 7 FCC Rcd 6414, 6416 n.15 (1992).

^{7/} Celsat's initial Petition requested an allocation for HPCS either in the MSS/RDSS bands or at 2110-2129 MHz and 2410-2428 MHz. The Commission dismissed the petition as to the MSS/RDSS bands and stated that it would address Celsat's alternative spectrum separately. However, as Celsat itself recognizes, the alternative spectrum was not allocated to MSS at WARC-92, and so, this request appears moot. Celsat Amendment, at 8.

^{8/} Celsat's system is based on a primary MSS allocation and a

This "amendment" is procedurally impermissible in several respects. First, Celsat should not be permitted to submit what amounts to a repetitious Petition for Reconsideration of the Commission's decision. See 47 C.F.R. § 1.429(i). The bulk of Celsat's 50-page pleading is rehashing the history of the Commission's domestic MSS proceedings and repetitious reargument of why the Commission should authorize HPCS.^{9/} See, e.g., Celsat Amendment, at 2-22; 24-32; 40-44. It is clear that Celsat's "amendment" is simply another attempt to have the Commission recognize Celsat's proposed HPCS based on arguments that were fully aired in Celsat's Petition for Rule Making and Petition for Reconsideration.

Celsat's pleading is also impermissible as a supplement to its Petition for Reconsideration. Celsat has already raised the use of the 2 GHz spectrum in its Petition for Reconsideration, and now is simply supplementing its explanation of that proposal.^{10/}

secondary land-mobile allocation. See Celsat Amendment, at 1-2. Thus, there does not appear to be any reason why these specific bands should be allocated to HPCS. See Celsat Amendment, at 45 n.53.

9/ Celsat's allegations in this discussion regarding LQSS's Globalstar system are not supported in its pleading nor in the referenced sections of the MSS Above 1 GHz Advisory Committee Report. The technology supporting Globalstar and its capabilities are a matter of record at the Commission in LQSS's numerous filings in support of its application, Request for Pioneer's Preference, and the complete Advisory Committee Report. These documents demonstrate that Celsat's analysis of Globalstar is inaccurate and not deserving of consideration.

10/ It should be noted that the WARC allocations for the 1970-1990 MHz and 2160-2180 MHz bands have been known since February 1992. Accordingly, Celsat has had 18 months to amend its Petition for Rule Making if these bands are a better fit for its system. Its failure to outline this

Section 1.429(d) of the Commission's Rules requires that a petition for reconsideration and any supplement thereto be filed within 30 days of the date of public notice unless leave is requested by motion. The order dismissing Celsat's initial Petition for Rule Making was released on September 4, 1993. Celsat filed its Petition for Reconsideration 30 days later. Celsat's "amendment" was submitted nine months later without a motion for leave to file.

Finally, Celsat should not be allowed to "amend" its Petition for Rule Making while its Petition for Reconsideration is pending.^{11/} Action on either pleading would moot the other. Such multiple requests for Commission action may result in waste of Commission resources. Cf. 47 C.F.R. § 25.153(b) (precluding consideration of satellite station application pending appeal of denial of application for similar service). Indeed, given the inconsistency between the two pending Celsat "petitions," there is a substantial question of which, if either, should be considered. The Commission should, therefore, not consider Celsat's pleading as an "amendment" to its Petition for Rule Making, but rather should dismiss it outright. The Commission should not permit Celsat -- which has yet to file an application for its system -- to delay Staff processing of the pending applications to provide

proposal previously is certainly sufficient reason to dismiss this latest "amendment." See 47 C.F.R. § 1.429(b) (precluding petitions for reconsideration based on facts that were previously known to petitioner).

^{11/} In the latest pleading, Celsat makes clear that it wants the Commission to act on and grant both the Petition for Rule Making as amended and the Petition for Reconsideration. See Celsat Amendment, at 12.

MSS in the RDSS/MSS bands through repetitious and voluminous requests for ungrantable action.

II. CELSAT'S PROPOSED USE OF EMERGING TECHNOLOGY BANDS IS CONTRARY TO THE PUBLIC INTEREST AND SHOULD BE DENIED.

Celsat's proposed use of the 1970-1990 MHz and 2160-2180 MHz bands should be rejected on its merits because it would be inconsistent with other proposed uses of the bands, and, in any event, HPCS is not a new "service" which requires the requested allocation.

First, as Celsat makes clear, the space and ground components of HPCS cannot be integrated. See Celsat Amendment, at 6 n.11, 7, 16 n.31, 42, 45 n.53, 48 n.59. In effect, Celsat is asking the Commission to grant what would be two nationwide licenses, one for its space segment, the other for its ground segment. Since these segments are separate, Celsat should simply file an application for each. Celsat's proposal does not qualify as a new "service" which requires an allocation of valuable spectrum.^{12/}

More importantly, Celsat's proposed use of these bands for HPCS would conflict with use of the bands for second-generation mobile-satellite systems. As LQSS stated in its comments on the United States' Preparation for International Telecommunication Union World Radiocommunication Conferences:

^{12/} The Commission has proposed that the 1960-1975 MHz band be allocated for wideband PCS. See Amendment of the Commission's Rules to Establish New PCS, supra, 7 FCC Rcd at 5691-92. Celsat's proposed allocation of 1970-1990 MHz to HPCS would conflict with this allocation, and it has not explained how its proposed nationwide HPCS system would co-exist with a PCS system operating in the proposed 1960-1975 MHz block.

. . . to accommodate expected growth in demand for MSS, and to accommodate both U.S. and non-U.S. systems that are likely to be implemented in the 21st century, MSS spectrum in the 2 GHz band should be available towards the end of this decade.^{13/}

LQSS was joined by Motorola, Inc., TRW Inc., Constellation Communications, Inc., AMSC Subsidiary Corporation, and Comsat Mobile Communications in asking the United States to seek accelerated, worldwide availability of the 2 GHz and other bands for MSS. The projected requirements for MSS will require substantial amounts of spectrum by the end of the decade. Celsat's requested allocation of these bands to a separate, new HPCS service would conflict with their allocation for MSS, a result inconsistent with the public interest.

III. CONCLUSION

For these reasons, LQSS requests the Commission to find Celsat's "amendment" to its Petition for Rule Making procedurally

^{13/} See LQSS Comments (ET Docket No. 93-198), at 9 (filed July 19, 1993).

defective and otherwise contrary to the public interest, and to dismiss or deny the "amendment" without further consideration.

Respectfully submitted,

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Its Attorneys

Dated: August 6, 1993

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Opposition To Amendment To Petition For Rule Making" of Loral Qualcomm Satellite Services, Inc. was served by hand delivery (as indicated with *) or by first-class, U.S. mail, postage prepaid this 6th day of August 1993 upon the following persons:

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